No. 10,998

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA and THE SOCIAL SECURITY BOARD OF THE UNITED STATES OF AMERICA,

Appellants,

vs.

AUGUSTA J. LALONE, on behalf of JULIE S. LALONE, JANET D. LALONE, JILL R. LALONE and LANCE D. LALONE,

Appellee.

BRIEF OF APPELLEE

Upon Appeal From the District Court of the United States for the Eastern District of Washington, Northern Division.

JUSTIN C. MALONEY,
Attorney for Appellee.

INLAND-AMERICAN PTG. CO.

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UNITED STATES OF AMERICA and THE SOCIAL SECURITY BOARD OF THE UNITED STATES OF AMERICA, *Appellants,* vs. AUGUSTA J. LALONE, on behalf of JULIE S. LALONE, JANET D. LALONE, JILL R. LALONE and LANCE D. LALONE, *Appellee.*	No. 10998

BRIEF OF APPELLEE

Upon Appeal From the District Court of the United States for the Eastern District of Washington, Northern Division.

STATEMENT AS TO JURISDICTION

Appellee instituted this action in the District Court of the United States for the Eastern District of Washington, Northern Division, being a resident of such judicial district, seeking review of the final decision of The Social Security Board of the United States denying the application of appellee for child's insurance benefits for four of her minor children

pursuant to jurisdiction conferred by Section 205 (g) of the Social Security Act.

STATEMENT OF THE CASE

Appellee controverts the statement of the case made by appellants in their brief as wholly inadequate and incomplete. December 7, 1942, appellee duly filed application under Title 11 of the Social Security Act as amended (53 Stat. 1362, 42 U.S.C.A., Sections 401 et seq.) for child's insurance benefits (Section 202 (c) of the Act as amended, 42 U.S.C.A. Section 402 (c) for four of her infant children, based upon the alleged status of her husband, Dwight J. LaLone, as an insured individual under the Act. (Tr. 78)[1]. February 19, 1943, the Bureau of Old Age and Survivors Insurance of the Social Security Board denied the application (Tr. 115), and thereafter upon reconsideration affirmed its decision. (Tr. 113). Hearing of the application before a Referee of the Social Security Board was requested and granted. The Referee denied the application and held that the wage earner was not a fully or currently insured individual for the reason that he was not an employee within the contemplation of the statute for a sufficient period prior to his death (Tr. 8 to 13).

Thereupon appellee appealed to the Appeals Council of the Social Security Board. March 11, 1944, the Appeals Council affirmed the Referee and adopted his

1. References to the printed record will be abbreviated R. . . . References to the photoprint transcript of the administrative proceedings will be abbreviated Td. . . . References to specific pages of the transcript will be to the handwritten numbers appearing near the top of the outside margin.

findings of fact and statement of reasons (Tr. 2). Under the practice of the Social Security Board this became the final decision of the Board. Appellee then brought this action to review the denial of her claims on behalf of her children, pursuant to the jurisdiction conferred by Section 205 (g) of the Social Security Act (R. 2).

Appellee is the widow of Dwight J. LaLone who died November 20, 1942. He left surviving him besides appellee, five minor children and a sixth child who was born some time later. The application here under review is in behalf of the four children named in the caption of this proceeding.

F. S. Barrett and his son, F. S. Barrett Jr., had been engaged in the general real estate business in Spokane for many years prior to the periods here in question (Tr. 35). While a young man Dwight J. LaLone worked for them as an insurance salesman (Tr. 37). That employment terminated when he obtained employment as manager of the insurance department for a local bank. When that bank failed Mr. LaLone purchased the insurance business of the bank and from that time until August 1, 1938, decedent conducted said insurance business under the name of D. J. LaLone Insurance Agency (Tr. 38).

By 1938, his business had reached the point where he owed substantial sums of money to the companies he represented for commissions he had collected (Tr. 27). He faced serious consequences unless such could be paid. Final demands for payment of these sums

aggregating more than Two Thousand ($2,000.00) had been made upon him (Tr. 32). This was the situation confronting LaLone in 1938. He then went back to his old employers, the Barretts. They were willing to assist their former employee (Tr. 37). They advanced the necessary funds with which he could make up his delinquencies (Tr. 40). They took his notes for such amounts, totaling the sum of $2,039.63 (Tr. 120 to 123). At that time, August 1, 1938, LaLone went to work for the Barretts for $200.00 a month (Tr. 28, 34). The LaLone Insurance Agency was then moved to the office of the Barretts. LaLone was employed as manager of the combined agencies. The promissory notes signed by LaLone in favor of F. S. Barrett & Co. were all due and payable one year from their respective dates (Tr. 120 to 123). No payment of principal or interest was made on any of the notes until May 1, 1942 (Tr. 49). LaLone's compensation of $200.00 a month continued from August, 1938, to May 1, 1942 (Tr. 34). During this period of three years and nine months the Barretts furnished the place at which the business was transacted. LaLone adjusted his working hours to comply with the office hours of the Barretts (Tr. 49, 66). The Barretts decided on the important questions of policy and had the right to decide on all questions of policy (Tr. 49, 53, 56). In matters of office management the policy of the corporation prevailed (Tr. 50, 76, 77). The Barretts considered LaLone as their employee. The matter of ultimate control of the insurance department was with the Barretts (Tr. 53).

F. S. Barrett Jr., was the secretary-treasurer of the corporation, the arrangement between the corporation and LaLone was made with F. S. Barrett Jr., acting on behalf of the corporation (Tr. 34). Barrett Jr. employed the stenographer in the insurance department, the only other employee besides LaLone (Tr. 42).

In January, 1942, LaLone registered as an employee with the Social Security Board and received his Social Security Account Number (Tr. 69, 70). At the same time Miss Dorothy Ebeling, stenographer in the insurance department, also registered and received her Account Number. Thereafter returns were duly filed under the Act showing both employees and the wages paid them. Barrett Jr. had requested from time to time that such registrations be made and the returns filed (Tr. 70, 76). Barrett Jr. knew that only salaries paid to employees should be reported and taxed, and with that knowledge, coupled with his knowledge of the relation between his company and LaLone, directed that LaLone register as an employee and that the tax thereon be paid (Tr. 76, 77). LaLone personally registered as an employee.

A memorandum of agreement was prepared by counsel for Barrett Company but was never executed by either of the parties thereto (Tr. 53). The copy of the memorandum introduced in evidence was uncovered in the Barrett office while some furniture was being moved, shortly prior to the hearing before the Referee (Tr. 39).

On some occasions there was not sufficient money on hand in the agency to pay salaries and expenses as they became due, and on such occasions money was either advanced by the corporation to the agency or borrowed by the agency from the bank (Tr. 51). The agencies were kept separate during the entire time for business reasons; that is, the policies written in the LaLone agency were endorsed "D. J. LaLone Insurance Agency," and the policies written in the Barrett agency were endorsed with the Barrett name (Tr. 43, 54, 66). The bank account was carried in the name of Barrett-LaLone Insurance Agency (Tr. 40). The arrangement between the parties provided for the breaking up of the business just as it had been put together. If it didn't prove satisfactory on either part, LaLone could pay the Barretts back their money and take his business (Tr. 48, 57, 59). LaLone had the right to buy back his business (Tr. 55). The relation between the Barretts and LaLone remained the same from August 1, 1938, to May 1, 1942, when the relationship was terminated (Tr. 29).

QUESTIONS INVOLVED

1. Was Mr. LaLone engaged in employment covered by the Social Security Act from August 1, 1938, to May 1, 1942.

Answered by the trial Court in the affirmative.

2. Was the determination by the Social Security Board that Mr. LaLone was not engaged in employment covered by the Social Security Act from August 1, 1938, to May 1, 1942, warranted by the record in this case, and did such determination have reasonable basis in the law.

Answered by the trial Court in the negative.

First, in order to clarify the issue in this case, no question is raised in this proceeding about the determination of other proceedings by the Social Security Board. Second, the straw-man argument urged by appellants that self-employed people, employers and entrepreneurs are not covered by the Social Security Act, is admitted. Third, let us not beg the question with the assumption that LaLone was a self-employed person during the period in question and then proceed vigorously to demonstrate that self-employed people are not covered by the Act.

Appellants apparently admit that the administrative determination in this matter was erroneous, for on Page 14 of their brief they say, "Was the administrative determination on the undisputed facts that LaLone was self-employed and not in the employ of another *so erroneous* as to permit the District Court

to say that as a matter of law it was not supported by substantial evidence." The matter presented to the Board was simple, clear-cut and not involved—was LaLone in covered employment between the dates stated above. The Board's determination of that matter was either right or wrong; there is no in between zone.

The definitions of "wages" and "employment" as set forth in the Act seem to be as broad and inclusive as carefully selected language could provide. Section 209 (a) of the Social Security Act as amended (Title 42, U.S.C., Section 409 [a]), provides that "The term 'wages' means all remuneration for employment . . . " Section 209 (b) of the Social Security Act as amended (Title 42, U.S.C., Section 409 [b]), defines employment as "any service performed after December 31, 1936, and prior to January 1, 1940, which was employment as defined in Section 210 (b) of the Social Security Act prior to January 1, 1940 . . . " and with exceptions not here pertinent, "any service of whatever nature, performed after December 31, 1939, by an employee for the person employing him . . . " Section 210 (b) of the Social Security Act in effect prior to January 1, 1940, (49 Stat. 625), defines "employment" to mean, with exceptions not here pertinent, "any service of whatever nature performed within the United States by an employee for his employer."

What does the record disclose as to the relation or agreement between the Barretts and LaLone. In determining whether that relation constituted LaLone

an employer, a partner, a joint venturer or an employee, we must consider the situation of the parties at the time the relationship was created. LaLone was defunct; he was in a perilous situation; the companies for whom he wrote insurance had not been paid the portions of the premiums due them on their insuring contracts then outstanding; over $2,000.00 was due these companies; final demands for payment had been made upon LaLone; his agency was on the precipice, yes, but more—he was not indebted on a pure contractual obligation — his indebtednesses represented monies belonging to those companies when they were first collected by him. The trial Court in his written opinion herein accurately stated the position of LaLone:

> "In his decision, the referee stresses the value of LaLone's insurance assets. To the uninitiated, such insurance accounts might seem valuable. With commendable modesty the referee admitted his unfamiliarity with the insurance business. The fact is that there is nothing less valuable than the insurance accounts of an agent who becomes delinquent with the companies he represents. He not only loses the right of representation of those particular companies, but he loses the opportunity of representation of any other companies. What he has is worthless. This was the situation confronting LaLone in 1938." (R. 29).

Clearly, LaLone at that time was not entirely a free agent. On the other hand, the Barretts were entirely free in the matter. Their former employee had left them under friendly circumstances, they were willing to assist their former employee and they advanced

the necessary funds with which he could make up his delinquencies and they took his notes for such amounts, as the trial Court found:

> "It is true that he (LaLone) hoped, as did the Barretts, that an insurance partnership later could be evolved. What he had at the time and during the entire time he was working there was simply a provisional arrangement whereby he could become a partner upon the success of the enterprise." (R. 30).

As Mr. Barrett Jr. testified:

> "Oh, no, no, because our understanding provided for the breaking up of our business just as it had been put together. If it didn't prove satisfactory on either part he could pay us our money back and take his business." (Tr. 57).

And again:

> "Well, our understanding was that he could buy his business—was separate to the extent that he could buy back the notes and take his business." (Tr. 59).

Appellants in their brief on Pages 29 and 30 thereof, state that "Both parties considered they were to share in losses as appears from the fact that LaLone, as well as one of the Barretts, signed the notes every time money was borrowed by the Barrett-LaLone Insurance Agency." Their unwarranted conclusion is best answered by referring to the transcript on Page 103 thereof we find the following questions propounded to Mr. Barrett Sr., and his answers thereto:

> "23. a. What provisions were there in the partnership agreement for the sharing of losses?
>
> None.

> b. If there was no such provision, what was the parties' understanding as to the allocation of such losses?
>
> F. S. Barrett & Co. would have been responsible and would have terminated his employment and kept the business."

Clearly, the finding of the Court that "LaLone had no financial responsibility. If the arrangement had resulted in debt, the Barretts would have paid the debt and discharged him" (R. 31, 32) is wholly warranted by the record herein and is typical of the misleading arguments of appellants herein, and is typical of the way the Referee ignored the record herein.

Three people were involved: F. S. Barrett Sr., F. S. Barrett Jr., and D. J. LaLone. All three have unequivocally indicated by either word or act that the relationship created was one of employment.

Page 107 of transcript, F. S. Barrett stated to Mr. Paul F. Johnson, assistant manager of Social Security Board office at Spokane, Washington, that:

> "He (F. S. Barrett Sr.) stated that he had always considered Mr. LaLone as his employee; however, he could offer no explanation as to why he had not included Mr. LaLone on their tax returns."

F. S. Barrett Jr. testified that he considered Mr. LaLone as their employee (Tr. 76, 77). Further, it was at his suggestion and direction that Mr. LaLone register as an employee. Mr. LaLone certainly considered himself an employee, for he registered under the Social Security Act as an employee. Thus we see all of the people involved in this matter considered

the relation one of employment. What stronger showing of employment could be made than presenting acts and statements of both employer and employee that the relationship was that of employment? Could the trial Court have done else but find that the decision of the Referee was not warranted by the record?

On pages of the transcript 93, 95 and 99, F. S. Barrett filed Statement of Employer covering the years 1938, 1939, 1940, 1941 and 1942, wherein he stated, "This is to certify that there has been paid to Dwight Julian LaLone 539-16-1206 for employment (as defined by the Social Security Act as amended) with the undersigned employer, wages in the amounts indicated during the quarters shown below:" (Then follows statement of wages paid). These were all signed by Mr. Barrett Sr., January 15, 1943. Again on January 27, 1943, Mr. Barrett Sr. stated the arrangement had with LaLone in the following words:

> "Oral understanding that F. S. Barrett & Co. loan to Dwight LaLone, sufficient money to pay overdue premiums to his companies, he to give his business as security, moving into F. S. Barrett & Co.'s office and managing both his and Barrett's insurance business, on a salary of $200.00 per month until he paid his notes. At that time a new basis was to be agreed upon or he could take agency of his companies out of F. S. Barrett & Co.'s office. A bank account was opened up as Barrett-LaLone Insurance Agency, otherwise the business was maintained under two separate heads, notes were paid and he moved out May 1, 1942." (Tr. 104).

In view of the foregoing, it is fair to ask: Why were all funds deposited to the account of Barrett-

LaLone Insurance Agency? Why were all notes signed by one of the Barretts and LaLone? Why were all checks signed by one of the Barretts and LaLone? And the answers are certainly obvious: Not because LaLone had any proprietary interest or present ownership therein, but solely for the protection of the Barretts. What less could have been done by the Barretts to protect their agency from the condition in which LaLone then found himself?

Appellants on Pages 35 and 36 of their brief, contend that LaLone did not receive a salary of $200.00 a month as found by the trial Court, and conclude on Page 36, "That salary was merely a working partner's or coadventurer's allowance or drawings . . . " Again we find the answer clear and direct in the record:

> "30. a. Did the employee receive a salary for the services he performed in addition to his drawing account, if any?
>
> No drawing account permitted. $200.00 monthly salary only.
>
> b. Was he allowed a drawing account?
>
> No." (Tr. 103).

Appellants laboriously attempt to show on Page 37 of their brief that the Barretts could not terminate the relationship. Never has an unexecuted, disregarded and forgotten instrument been accorded more weight than in the decision of the Referee in this proceeding and in the brief of appellants herein. Nothing could be more definite than the statement of F. S. Barrett Sr. that in event of loss, F. S. Barrett & Co. would

have been responsible and would have terminated his employment and kept the business.

Truly, the record bulges with proof that LaLone was an employee from August 1, 1938, to May 1, 1942, and only by the most tortuous interpretation of the statute and regulations and disregard of the record herein, could it be concluded that LaLone was not engaged in employment covered by the Act. The finding and decision of the Referee clearly does not have warrant in the record.

Appellants argue "Findings of the Board supported by substantial evidence are conclusive."

The applicable statute provides in part as follows:

> "Any individual . . . may obtain a review of such decision by a civil action commenced within sixty days . . . Such action shall be brought in the District Court of the United States for the judicial district in which the plaintiff resides . . . The Court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying or reversing the decision of the Board, with or without remanding the cause for a rehearing. The findings of the Board as to any fact, if supported by substantial evidence, shall be conclusive, . . . "
>
> Title 11, Section 205 (g) of the Social Security Act as amended (42 U.S.C.A. 405 [g]).

Obviously, this statute does not require of the Court an idle act, but substantially provides for review as therein provided. The wording of the statute itself answers the argument of appellants when it says, "if supported by substantial evidence." If we follow the reasoning of appellants, we come to this

situation: Any determination by administrative board is final and conclusive if a hearing has been accorded and there is a scintilla of evidence to sustain the decision. The directives of the statute are plain; the findings of the Board as to any fact, ultimate or intermediate, are only conclusive if supported by substantial evidence. In order for the Court to accord the review provided by the statute, the Court must examine the evidence to see if there is substantial evidence to support the Board's findings.

A similar question was presented to the District Court of Pennsylvania, and the Court there held:

> "Counsel for the Board contend that there is substantial evidence to support the Board's finding that Morgan was 'neither actually nor constructively paid wages in the period from January 1, 1937, to April 9, 1938,' and that, consequently, this Court cannot consider this question in this proceeding. Were this merely a finding of fact, we would agree with this reasoning. 42 U.S.C.A. Par. 405 (g). However, this finding represents a determination by the Board that the facts do not constitute payment of wages within the meaning of the Social Security Act as a matter of law. As such it is subject to review by this Court."
>
> *Morgan v. Social Security Board*
> 45 Fed. Supp. 349, 352.

The trial Court has found that the Referee reached his conclusion without regard to the statute or regulations and that his determination has no reasonable basis in law, and that his factual analysis has no warrant in the records. The Supreme Court of the United States has passed upon this question:

> "It is contended that the applicable statutes and regulations properly interpreted, forbid the method of calculation followed by the Tax Court. If this were true, the Tax Court's decision would not be 'in accordance with law' and the Court would be empowered to modify or reverse it. Whether it is true is a clear-cut question of law and is for decision by the Courts."
>
> *Dobson v. Commissioner of Internal Revenue* 320 U. S. 489, 492, 493.

In *Gray v. Powell,* 314 U. S. 402, relied upon by appellants herein, the Supreme Court in its decision showed that the administrative decision was made in accordance with law and did have warrant in the record, and the reversal of the Circuit Court was on the merits as shown by the record, that the finding of the Commission that the railroad was a "producer" within the meaning of the Bituminous Coal Act, did have warrant in the record and was in accordance with law.

Walker v. Altmeyer, 137 F. (2) 531 (C. C. A. 2), cited by appellants, is further proof of the point that the decision of the administrative Board must be in accordance with law and supported by substantial evidence. There the Court thoroughly justified the administrative decision and showed that Walker was engaged in employment and was receiving compensation in excess of $15.00 a month, and therefore not entitled to primary benefits under the Act. Stated conversely, the ruling of the Court was simply that the conclusion of the trial Court was not supported by the evidence in the case.

A similar question was presented to the Circuit Court of Appeals, Seventh Circuit in *Carroll v. Social Security Board,* 128 F. (2) 876, and that Court on Page 881, said:

> "The purpose which Congress had in mind, and the object sought to be accomplished by the enactment before us, is aptly stated in *Helvering v. Davis,* 301 U. S. 619, 640, 672; 57 S. Ct. 904; 81 L. Ed., 1307; 109 A.L.R., 1319, et seq. That it should be liberally construed in favor of those seeking its benefits cannot be doubted. While the question before us is not free from doubt—in fact, it is extremely close—we are of the opinion that plaintiff was an employee of the bank within the meaning of the Act and entitled to its benefits. In so concluding we have not overlooked the statutory admonition which binds us to accept the finding of the Social Security Board if supported by substantial evidence. The rule is not controlling, however, because the Board's decision, that plaintiff was not an employee within the terms of the Act, is without substantial support. Moreover, in our view, the rule has no application because the question presents an issue of law rather than of fact. It involves a construction of the Act."
>
> *Carroll v. Social Security Board*
> 128 F. (2) 876, 881.

In every case the reviewing Court has examined the evidence and determined whether or not the administrative decision has warrant in the record and is supported by substantial evidence. The trial Court in this case did just that thing and found that the administrative decision did not have warrant in the record and was not supported by substantial evidence and was contrary to law. Appellants apparently seek a

rule requiring the Courts to blindly accept the administrative determination. Such is not the law.

The Referee's decision in this matter and statement of reasons therefor adopted by the Social Security Board as its decision not containing any findings of fact, but being as the trial Court has stated, "a confused mixture of findings, inferences and conclusions," certainly cannot nullify the judicial review provided by statute. *United States v. Carolina Freight Carriers Corp.,* 315 U. S. 475, 488, 489; *Florida v. United States,* 282 U. S. 194, 215.

Appellants disclaim all intent to narrowly construe the Act or to be dominated by restrictive common law tests in determining coverage, but the decision of the Referee on the record herein speaks more positively to the contrary.

The Circuit Court of Appeals for the Sixth Circuit had before it a comparable question and said:

> "It will avail us little to consider whether the master-servant relationship existed between the appellee and its home workers under the common law, and we may assume that the well-considered opinion of the District Judge was, in that respect, sound, even though there are cases, both state and federal, which hold that an employer-employee status may exist when there is no continuous supervision over the work if there is such supervision as the nature of the work requires . . . We are dealing, however, with a specific statute which, like the National Labor Relation's Act, 29 U.S.C.A. Sec. 151 et seq., is of a class of regulatory statutes designed to implement a public, social, or economic policy through remedies not only unknown to the common law but often in

derogation of it . . . If the Act presently considered, expressly or by necessary implication, brings within the scope of its remedial and regulatory provisions, workers in the status here involved, we are not concerned with the question whether a master-servant relationship exists under otherwise applicable rules of the common law."

Walling v. American Needlecrafts Inc.,
139 F. (2) 60, 63.

In *United States v. Vogue Inc.,* Judge Parker, speaking for the Court said:

" . . . To allow the employer to escape the consequences or to deny the employee the benefits of the employer-employee relationship because of agreement that payment be made on the piece work basis or because the employee exercises the judgment with respect to the work that is expected of any skilled worker, is to lose the substance of the relationship in attempting to apply certain rule of thumb distinctions in the law of independent contractors. The fact that one having an independent calling, such as a cook, gardener, or chauffeur, exercises a judgment as to the work done free of detailed direction by his employer does not make him an independent contractor . . . "

And again Judge Parker says:

"The Social Security Act, like the Fair Labor Standards Act, . . . , and the National Labor Relations Act, . . . , was enacted pursuant to a public policy unknown to the common law; and its applicability is to be judged rather from the purposes that Congress had in mind than from common law rules worked out for determining tort liability . . . "

United States v. Vogue Inc.
145 F. (2) 609, 610, 611.

In *National Labor Relations Board v. Hearst Publications Inc.,* 322 U. S. 111, the Court discussed the questions here presented and stated the guiding rules which are determinative of this proceeding:

At Page 124 the Court said:

> "Whether, given the intended national uniformity, the term 'employee' includes such workers as these newsboys must be answered primarily from the history, terms and purposes of the legislation. The word 'is not treated by Congress as a word of art having a definite meaning . . . ' Rather 'it takes color from its surroundings . . . (in) the statute where it appears,' . . . and derives meaning from the context of that statute, which 'must be read in the light of the mischief to be corrected and the end to be attained,' . . . "

and on Page 126,

> "The mischief at which the Act is aimed and the remedies it offers are not confined exclusively to 'employees' within the traditional legal distinctions separating them from 'independent contractors.' Myriad forms of service relationship, with infinite and subtle variations in the terms of employment, blanket the nation's economy. Some are within this Act, others beyond its coverage. Large numbers will fall clearly on one side or on the other, by whatever test may be applied. But intermediate there will be many, the incidents of whose employment partake in part of the one group, in part of the other, in varying proportions of weight. And consequently the legal pendulum, for purposes of applying the statute, may swing one way or the other, depending upon the weight of this balance and its relation to the special purpose at hand."

The Court on Page 128 deals with the economic situation particularly pertinent to this case:

> "In short, when the particular situation of employment combines these characteristics, so that the economic facts of the relation make it more nearly one of employment than of independent business enterprise with respect to the ends sought to be accomplished by the legislation, those characteristics may outweigh technical legal classification for purposes unrelated to the statute's objectives and bring the relation within its protections."

continuing on Page 129 with further reference to the economic situation:

> "In this light, the broad language of the Act's definitions which in terms reject conventional limitations on such conceptions as 'employee,' 'employer,' and 'labor dispute' leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications . . . "

and the Court on Page 132 of the opinion after statement of the record states that "The record sustains the Board's findings and there is ample basis in the law for its conclusion.

CONCLUSION

The Trial Court correctly found that D. L. LaLone was in covered employment under the Act during the time here involved and the finding of the Social Security Board to the contrary was not sustained by substantial evidence and was not warranted by the record and not in accordance with law. The judgment of the trial Court is correct and should be affirmed.

Respectfully submitted,

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Attorney for Appellee.